142-651

RECORD, CASE No. 14,867.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 1393.

NISHIMURA EKIU, APPELLANT,

vs.

THE UNITED STATES AND CHARLES A. GARTER, U. S. DISTRICT ATTORNEY IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

FILED SEPTEMBER 29, 1891.

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1 *Petition.*

In the Circuit Court of the United States, Northern District of California.

In the Matter of NISHIMURA EKIU on *Habeas Corpus.*

To the Honorable Lorenzo Sawyer, judge of the circuit court of the United States, northern district of California:

The petition of G. Hasingawa respectfully shows—

That the said Nishimura Ekiu is unlawfully imprisoned, detained, confined, and constrained of her liberty by one William H. Thornley in the city and county of San Francisco, State of California.

That the said imprisonment, detention, confinement, and restraint are illegal, and the illegality thereof consists of this, to wit:

2 That it is claimed by said William H. Thornley that he is commissioner of immigration for the port of San Francisco by virtue of authority derived by him from the Secretary of the Treasury of the United States; that the said Nishimura Ekiu is a subject of the Emperor of Japan and must not and cannot be allowed to land under the provisions of the act of Congress regulating immigration to this country and in effect on the first day of April, 1891, and therefore the said alleged commissioner has detained and restrained the liberty of said Nishimura Ekiu by his alleged virtue of authority so to do under the aforesaid act of Congress.

And petitioner alleges that said Nishimura Ekiu does not come within any of the restrictions or prohibitions of the said act of Congress or any act relating to the subjects of the Emperor of

3 Japan, and that she is a fit and proper person and entitled to land, but that the said William H. Thornley, assuming the alleged power to detain her as aforesaid, has denied her application to land.

That said denial is without right or authority of law, and your petitioner, as the next friend of the said Nishimura Ekiu, makes this application on her behalf.

Wherefore your petitioner prays that a writ of *habeas corpus* may be granted, directed to the said William H. Thornley, commanding him to have the body of the said Nishimura Ekiu before your honor, at a time and place therein to be specified, to do and receive what shall then and there be considered by your honor concerning her, together with the time and cause of her detention and said writ, and that she may be restored to her liberty.

Dated May 13, 1891.

G. HASCHAWA,
EDW. LANDE,
Att'y for Petitioner.

4 STATE OF CALIFORNIA,
City and County of San Francisco,
Northern District of California.

G. Hasingawa, being duly sworn, deposes and says that he is the

petitioner named in the foregoing petition, and that he has read the said petition and knows the contents thereof, and that the same is true of his own knowledge; that he is a merchant residing and doing business in the said city and county at No. 637 California street.

G. HASCHAWA.

Sworn and subscribed to before me this 13th day of May, 1891.

F. D. MONCKTON,
Commissioner of the Circuit Court of the United States for the Northern District of California.

Order.

Let the writ of *habeas corpus* issue pursuant to the prayer of the petition, returnable on May thirteenth, 1891; and ordered that the case be referred to S. C. Houghton, Esq., to take proofs and report findings and judgment as prescribed in general order of this court in like cases.

(Signed) LORENZO SAWYER, *Judge.*

Endorsed: Filed May 13, 1891. L. S. B. Sawyer, clerk.

U. S. Marshal's Return to Writ.

In the Circuit Court of the United States, Northern District of California.

In the Matter of NISHIMURA EKIU on *Habeas Corpus.*

The President of the United States of America to Wm. H. Thornley, Greeting:

You are hereby commanded that you have the body of Nishimura Ekiu, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name he shall be called or charged, before the honorable the circuit court of the United States for the northern district of California, at the court-room of said court, in the city and county of San Francisco, California, on 13th day of May, 1891, to do and receive what shall then and there be considered in the premises.

And have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice [SEAL.] of the Supreme Court of the United States, this 13th day of May, A. D. 1891.

L. S. B. SAWYER, *Clerk,*
By —— ——, *Deputy Clerk.*

Endorsed: No. 11292. Circuit court of the United States, northern district of California. In the matter of Nishimura Ekiu on *habeas corpus.* Marshal's return of service of writ of *habeas corpus.* Filed on return this 13 day of May, 1891. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

I, L. S. B. Sawyer, clerk of the circuit court of the United States for the northern district of California, do hereby certify the foregoing to be a true copy of the writ of *habeas corpus* issued in the within-entitled matter.

Attest my hand and seal of said circuit court this 13th day of May, A. D. 1891.

L. S. B. SAWYER, *Clerk.*

I hereby certify that on the 13th day of May, 189–, I received the writ of which the within is a copy, and that on the 13th day of May, 1891, at San Francisco, in this district, I personally served the said writ by delivering to and leaving the same with Wm. H. Thornley.

Dated San Francisco, Cal., May 13th, 1891.

W. G. LONG,
U. S. Marshal,
By P. H. MALONEY,
Deputy Marshal.

8 *Writ of Habeas Corpus.*

In the Circuit Court of the United States, Northern District of California.

In the Matter of NISHIMURA EKIU on *Habeas Corpus.*

The President of the United States of America to Wm. H. Thornley, Greeting:

You are hereby commanded that you have the body of Nishimura Ekiu, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name he shall be called or charged, before the honorable the circuit court of the United States for the northern district of California, at the court-room of said court, in the city and county of San Francisco, California, on 13th day of May, 1891, to do and receive what shall then and there be considered in the premises.

And have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 13th day of May, A. D. 1891.

[SEAL.] L. S. B. SAWYER, *Clerk.*

9 Endorsed: No. 11292., Circuit court of the United States, northern district of California. In the matter of Nishimura Ekiu on *habeas corpus.* S. S. ticket No. —. Writ of *habeas corpus* and return thereto. Filed on return this 13 day of May, 1891. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

In obedience to the within writ I hereby produce the body of Nishimura Ekiu, as within directed, and return that I hold her in my custody by direction of the customs authorities of the port of San Francisco, California, under the provisions of the immigration

act; that by an understanding between the U. S. attorney and attorney for petitioner said party will remain in the custody of the M. E. Japanese & Chinese mission pending a final disposition of the writ.

WM. H. THORNLEY,
Commissioner of Immigration.

San Francisco, May 13, 1891.

10 *Intervention of U. S. Attorney for United States.*

In the United States Circuit Court, Northern District of California.

In Re NISHIMURA EKIU on *Habeas Corpus.* No. 11292.

To the Honorable Lorenzo Sawyer, judge:

And now comes Charles A. Garter, United States attorney for the northern district of California, and asks for leave to intervene for and — behalf of the United States in the matter of the application made on behalf of the person first above mentioned for a writ of *habeas corpus*, and respectfully make- opposition to the said writ, and for grounds of intervention states as follows:

11 That, as he is informed and believes, the said person in whose behalf said application was made has been and now is *un*lawfully detained by the master of the steamship now in the port of San Francisco, northern district of California, in compliance with the provisions of an act of Congress of the United States entitled "An act in amendment to the various acts relative to immigration and the importation of aliens under contract or agreement to perform labor," approved March, 1891, for the following reasons: That at all times mentioned herein and in said writ W. H. Thornley was the commissioner of immigration at the port of San Francisco, and was acting under the special instructions of the Secretary of the Treasury in the enforcement of the provisions of said act.

That the said person was an alien immigrant on board the steamship Belgic, which arrived in this port on or about May 7th, 1891.

12 That, pursuant to his duties under said act, said Thornley examined into the condition of the passengers upon said vessel, and particularly that of the person in whose behalf said application was made, and upon said examination found said person to be an alien immigrant from Yokohama, Empire of Japan; that the said applicant was a female without any means of support, without relatives or friends in the United States, and that said person was a person unable to care for herself and liable to become a public charge, inhibited from landing under the provisions of said act of 1891, and that said person was an immoral person and in various ways inhibited from landing under the provisions of said act; and thereupon the said Thornley prohibited the said applicant above named from landing at the said port of San Francisco and

thereupon reported the same to T. G. Phelps, collector of said
13 port, who thereupon decided that said person was not entitled to land under the provisions of said act.

That said finding and decision rendered as aforesaid is not reviewable by said court and is final and conclusive.

That said court has no jurisdiction or authority to review the findings and decision of the said commissioner and the said collector under the provisions of the said act.

Wherefore the said United States attorney asks that a judgment and order of this honorable court be made and entered in accordance with the allegations herein contained and directing that the said person first above mentioned be detained on board of said vessel until released as provided by law, or otherwise to be returned to the country from whence she came.

That these proceedings be dismissed and the said writ re-
14 called, and the said person be remanded to the custody whence she was taken and placed on board the steamship Belgic or other ship of the Occidental and Oriental Steamship Company to be returned to Japan.

And that such further order be made as to the court may seem proper and legal in the premises.

CHARLES A. GARTER,
United States Attorney,
Per WITTER, *As't.*

Endorsed: Filed May 16, 1891. L. S. B. Sawyer, clerk.

15 *Intervention of U. S. Inspector of Immigration.*

In the United States Circuit Court, Northern District of California.

In Re NISHIMURA EKIU on *Habeas Corpus.*

To the Honorable Lorenzo Sawyer, judge:

And now comes J. L. Hatch, United States inspector of immigration, by Chas. A. Garter, United States attorney for the northern district of California, appearing in his said behalf, and asks leave to intervene in the matter of the application made on behalf of the person first above mentioned for a writ of *habeas corpus*, and respectfully makes opposition to the said writ, and for grounds of intervention states as follows:

That, as he is informed and believes, said person in
16 whose behalf said application was made has been and now is lawfully detained by the master of the steamship Belgic, now in the port of San Francisco, northern district of California, in compliance with the provisions of the several acts of Congress of the United States entitled as follows:

I. An act entitled "An act to prohibit the importation and immigration of foreigners and aliens under contract or agreement to perform labor in the United States, the Territories, and the District of Columbia," approved February 26th, 1885. (23 Stat., 332.)

II. An act entitled "An act to prohibit the importation and immigration of foreigners and aliens under contract or agreement to perform labor in the United States, the Territories, and the
17 District of Columbia," approved February 23d, 1887. (24 Stat., 414.)

III. An amendment to the last-mentioned act, approved October 19th, 1888. (25 Stat., 566.)

IV. An act entitled "An act in amendment to the various acts relative to immigration and the importation of aliens under contract or agreement to perform labor," approved March 3d, 1891. (Stat. at Large, 1890 and '91, 1084.)

And for the following reasons: That since the issuance of the said writ, to wit, since the 13th of May, 1891, the said J. L. Hatch has been appointed and has duly qualified as an inspector of immigration at the port of San Francisco, as contemplated by the said last-named act of March 3, 1891; that at all times since his said appointment and qualification he has been acting in the discharge of his duties as said inspector in the enforcement of all the
18 several acts last above enumerated; that the said person in whose behalf said application has been made was an alien immigrant on the steamship Belgic, which arrived in this port on or about May 7, 1891; that pursuant to his duties under said act and acts said J. L. Hatch examined into the condition of the passengers on said vessel, and particularly that of the person in whose behalf said application was made; that the said examination took place after the issuance of the said writ, to wit, upon Friday, May 15th, and Saturday, May 16th, 1891; that upon said examination said J. L. Hatch found said person to be an alien immigrant from Yokohama, Empire of Japan; that the said applicant was a female without means of support, without relatives or friends in the United States, and that said person was a person unable to care for herself and liable to become a public charge, and therefore inhibited
19 from landing under the provisions of said act of 1891 and previous acts of which said act is amendatory; that said person was an immoral person and in various ways inhibited from landing under the said provisions of the said act; that thereupon the said J. L. Hatch prohibited the said applicant first above named from landing at the said port of San Francisco, and thereupon reported the said action to T. G. Phelps, collector at said port, who thereupon decided that said person was not entitled to land or to be and remain within the United States under the provisions of said act; that your intervenor says that said finding and decision rendered as aforesaid is not reviewable by said court and is final and conclusive; that said court has no jurisdiction or authority to review the findings and decision of the said commissioner
20 and the said collector under the provisions of the said act of 1891, the said decisions made by the inspecting officers or their assistants touching the right of any alien to land shall be final unless appeal be taken to the superintendent of immigration, whose action shall be subject to review only by the Secretary of the Treasury.

Your intervenor further says that the said action of the collector is final and conclusive; that by the provisions of the act of February 23d, 1887, the collector of the port is vested at all times with authority to send back all persons imported under contract to the nations to which they belong and from whence they came upon due proof of such contract coming to his attention.

Wherefore the said J. L. Hatch asks that a judgment and
21 order of this honorable court be made and entered in accordance with the allegations herein contained, and directing that the said person first above mentioned be detained on board the said vessel until released, as provided by law, or otherwise to be returned to the country from whence she came; that these proceedings be dismissed and the said writ recalled and the said person be remanded to the custody whence she was taken and placed upon board the steamship Belgic or other ship of the Occidental and Oriental Steamship Company to be returned to Japan, and that such further order be made as to the court may seem proper and legal in the premises.

J. L. HATCH,
By CHARLES A. GARTER,
United States Attorney.

Endorsed: Filed May 18, 1891. L. S. B. Sawyer, clerk.

22 *Letter of T. G. Phelps, Collector, to W. H. Thornley, Com'r, &c.*

CUSTOM-HOUSE, SAN FRANCISCO, CAL.,
COLLECTOR'S OFFICE, *May 13th*, 1891.

W. H. Thornley, Esq., commissioner immigration, San Francisco.

SIR: Your action in refusing landing to the following immigrants now on board the st'r Belgic is hereby approved, viz:

Natenate Take,	female,	aged	27	years.
Nokamura Yone,	"	"	13	"
Kato Masu,	"	"	39	"
Kato Kan,	"	"	14	"
Tanchi Miyo,	"	"	23	"
Nishimura Iku,	"	"	25	"

And this decision is final, unless reversed on appeal to the Secretary of the Treasury, and you will cause them to be detained on board the above-named vessels or elsewhere until the sailing thereof or until proper provision for their deportation can be made, when they shall be returned to the country from whence they
23 came, and such deportation shall be under your immediate care and supervision, unless specially otherwise ordered by the Secretary of the Treasury.

If there is any objection on the part of the master of the vessel to these proceedings notify this office, whereupon a bond will be exacted for return of these immigrants at the expense of the vessel.

I am, &c. T. G. PHELPS, *Collector.*

24 *Letter of W. H. Thornley, Com'r, to T. G. Phelps.*

Vignette. Wm. H. Thornley, commissioner.

Commissioner of immigration of the State of California, 506 Battery St.

SAN FRANCISCO, *May* 13, 1891.

Hon. T. G. Phelps, collector of customs, port of San Francisco.

SIR: After a careful examination of the alien immigrants on board the Br. st'r Belgic, Walker, master, from Yokohama, &c., May 7, 1891, I have found six immigrants who, I believe, are prohibited from landing by the existing immigration laws, viz: Natenate Take, aged 27 years, female; comes in company with a girl named Nakamura Yone, aged 13 years. The statements made by them are that they had been employed by a J. M. Boaz, temporarily residing in Yokohama, to come to this country under wages of $15.00 and $10.00, respectively, and are to proceed to Ogden,
25 Utah. Their passage was paid for by their employer, and they were instructed to stop at some Japanese hotel upon arrival at this port, and if their money was not sufficient to pay their way to Ogden, to telegraph to one Fred. Johnson, at Ogden, who would send them funds enough to enable them to reach their destination. I therefore report them as coming under the contract labor law.

Kato Masu, female, 39 years of age, and Kato Kan, female, 14 years of age, state that they are going to Seattle, where Kato Masu's husband is a cook in a restaurant. These women do not appear to know how to get to their destination, and have but $20.00 between them. They are extremely ignorant, unable to answer the questions asked of them, and cannot give satisfactory statements about themselves.

Tanchi Miyo, female, 23 years of age, claims that she is to
26 meet her husband in San Francisco, where he has resided for some time, and that he intends to take her to Australia, but he has not as yet put in an appearance. She states that her husband wrote to her to come here and stop at a Japanese hotel until he called for her. She has $20.00 and no friends in San Francisco.

Nishimura Iku, female, aged 25 years, is very contradictory in her statements. She does not know where her husband is, but states that she sold her furniture and has from the results of the sale $22.00 to live on until she finds her husband.

I therefore report these women as liable to become public charges, having no occupation, very little money, and no friends.

I am informed that a certain Japanese keeper of a house
27 of prostitution in this city is anxious to have the women landed.

Pending your final decision as to the right of these persons to land, I have placed them temporarily in the Methodist Chinese

mission on Washington St., above Stockton, as the steamer was not a proper place to detain them, until the date of sailing.

I have also to report that I have examined the passengers who arrived on the Br. st'm'r China, from Yokohama, April 25, 1891, but no one was found who should be prohibited from landing.

Very respectfully,

WM. H. THORNLEY,
Commissioner of Immigration.

28 *Report of Alien Immigrants.*

(Cat. No. 199.)

Report of alien immigrants forbidden to land under the provisions of the act of Congress approved August 3, 1882, at the port of San Francisco, being passenger upon the st'r Belgic, Walker, master, which arrived May 7, 1891, from Yokohama.

Names of immigrants: Nishimura Iku.
Place of birth:
Country: Japan.
Town or city: ——.
Sex: Female.
Age: 25.
Place of destination: San Francisco.
Parties engaging laborers:
Names: ——.
Place of business: ——.
Names of vessels: ——.
Rig: ——.
Name of master: ——.
Date of arrival: ——.

Passport states that she comes to San Francisco in company with her husband, which is not a fact. She states that she has been married two years and that her husband has been in the United States one year, but she does not know his address. She has $22.00, and is to stop at some hotel until her husband calls for her.

WM. H. THORNLEY,
Commissioner of Immigration.

Port of San Francisco, May 13, 1891.

[Endorsed:] (Cat. No. 199.) Custom-house, port of San Francisco, May 13, 1891. St'r Belgic. Report of alien immigrants forbidden to land, week ending —— —, 188–. (Vignette.) Division M. M. and I. R.

29 *Report of Alien Immigrants.*

(Cat. No. 199.)

Report of alien immigrants forbidden to land under the provisions of *of* the act approved March 3d, 1891, at the port of San Francisco, arrival per st'r Belgic, Walker, master, from Yokohama, May 7, '91.

Names of immigrants: Nishimura Iku.
Place of birth:
Country: Japan.
Town or city: ——.
Sex: Female.
Age: 25.
Place of destination: San Francisco.
Parties engaging laborers:
Names: ——.
Place of business: ——.
Names of vessels: ——.
Rig: ——.
Name of master: ——.
Date of arrival: ——.

Passport states that she comes in company with her husband, which is not the fact. States that she has been married two years and that her husband has been in the U. S. one year, but she does not know his address. Has $22.00 and is to stop at some hotel until her husband calls for her.

J. L. HATCH,
Immigration Inspector.

Port of San Francisco, May 16, 1891.

[Endorsed:] (Cat. No. 199.) Custom-house, port of ——, —— —, 188–. —— ——, collector. Report of alien immigrants forbidden to land, week ending —— —, 188–. (Vignette.) Division M. M. and I. R.

30 *Commissioner's Report.*

In the Circuit Court of the United States for the Ninth Judicial Circuit and Northern District of California.

In the Matter of NISHIMURA EKIU on *Habeas Corpus.* No. 11292.

To the honorable the circuit court of the United States for the ninth circuit and northern district of California:

Pursuant to the order of the above-named court, duly made and entered herein on the 13th day of May, A. D. 1891, referring the above-entitled matter to the undersigned, a commissioner of said court, with instructions to find the facts and his conclusions of law
31 and to report a judgment therein, the said matter having been regularly brought on for hearing, and the same having

been duly heard and submitted and due consideration having been thereon had, I, the said commissioner, do respectfully report:

By the act of Congress of March 3, 1891, amending the immigration and contract labor laws of the United States, it is provided, among other things, that there shall be excluded from admission into the United States, in accordance with the existing acts regulating immigration, all alien paupers or persons likely to become a public charge; that upon the arrival by water at any place within the United States of any alien immigrants they shall be inspected by officers provided for or designated in the act, who shall have power to administer oaths and to take and consider testimony
32 touching the right of any such aliens to enter the United States, all of which shall be entered of record, and that "all decisions made by such officers touching the right of any alien to land, when adverse to such right, shall be final unless appeal be taken to the superintendent of immigration, whose action shall be subject to review by the Secretary of the Treasury." The offices of superintendent of immigration and inspection are created by the act, and the appointment of such officers is provided for; and it is provided that certain duties imposed and powers conferred by other acts upon other officers, among whom are named State commissioners acting under contract with the Secretary of the Treasury, shall be performed and exercised as occasion may require by
33 the inspection officers of the United States.

The petitioner—designating thus the person in whose behalf the writ has issued herein—is a Japanese woman and came to the United States from Japan upon the steamer Belgic, arriving in the port of San Francisco on the 7th day of May, 1891. She was refused landing by W. H. Thornley, commissioner of immigration of the State of California, acting, it is asserted, under contract with and authority of the Secretary of the Treasury, upon the ground that, if landed, she was "likely to become a public charge" and should therefore be excluded from admission into the United States, in accordance with the provisions of the said act. The said commissioner of immigration made a written report to the collector of the port of San Francisco of the purport above indicated
34 and his action in the premises was approved by the collector. The writ of *habeas corpus* was thereupon applied for and issued. Pending hearing upon the writ J. L. Hatch was duly appointed an inspector under said act, and before hearing or examination was had in the matter by or before the court said inspector made the inspection, investigation, and examination required by the act and refused to allow the petitioner to land upon the same ground as that taken by the commissioner of immigration, and filed with the collector a written report of his action and his conclusion. The reports of both of the officials named are in evidence herein.

The legality of the action of the commissioner of immigration of California is questionable, even though taken, as is claimed,
35 under and pursuant to the direction and the attempted authorization of the Secretary of the Treasury. It is probable that the duties imposed and the powers conferred under the act can

be performed and exercised only by Federal officers duly appointed under the act or therein designated and recognized. This, however, is a matter of inconsiderable importance. It appears that the petitioner and all other persons refused landing by the said commissioner have also been refused landing by the officer duly appointed under said act, and the question as to the authority or the right of said commissioner to take action in similar cases is likely never again to arise. Inasmuch, therefore, as the said petitioner has, after due inspection and examination by an officer provided for by and duly appointed under the act, been refused landing, and is, it
36 is conceded, regularly before the court in this proceeding, it is deemed unnecessary to further consider or to pass upon the question adverted to.

Upon the examination counsel for the petitioner offered to introduce evidence as to her right to land. The United States attorney, having intervened in the proceeding on behalf of the Federal Government, objected upon the ground that authority to take and consider such evidence and to determine such right is by the said act vested exclusively in the officers named therein, and the court is without jurisdiction to inquire into the facts or to review the action of the inspector.

The questions raised by the objection being recognized as of controlling importance have been argued at length by counsel.
37 The ground chiefly relied upon by counsel for the petitioner is that, even though the construction placed by the United States attorney upon the language of the act be held to be correct, the act is in so far unconstitutional; that by the Federal Constitution the petitioner herein is accorded a right to the writ of *habeas corpus*; that that right carries with it the right to a determination by the court as to the legality of her detention and, therefore, necessarily the right to inquire into the facts relating thereto.

Undoubtedly the petitioner cannot be, and she has not been, beprived of her constitutional right to the writ of *habeas corpus;* but it does not follow that upon proceedings under the writ the court must or may hear and adjudicate upon the question of her right under the law to land. The statute has provided competent
38 trial and appellate tribunals and endowed with the power and duty of investigating and determining that right, and it is well settled that "whenever a statute gives a discretionary power to any person to be exercised by him upon his own opinion of certain facts it is a sound rule of construction that the statute constitutes him the sole and exclusive judge of the existence of those facts;" and "it is a presumption of law that all public officers * * * perform their proper official duties until the contrary is proved; and where an act is to be done * * * upon evidence and proofs to be laid before a public officer upon which he is to decide the fact that he has done the act * * * is *prima facie* evidence that the proofs have been regularly made and were
39 satisfactory. No other tribunal," unless by law thereunto expressly authorized, "is at liberty to re-examine or controvert the sufficiency of such proofs if laid before him when the law

has made such officer the proper judge of their sufficiency and competency."

Mott *vs.* Martin, 12 Wheat., 19, 31.
The Phila., &c., Co. *v.* Stimpson, 14 Pet., 448, 458.
Foley *vs.* Harrison, 15 How., 433, 448.

The principles of law thus enunciated have been followed and applied in numerous cases by the supreme court and by circuit and district courts for the southern district of New York in *habeas corpus* proceedings, some of them arising under the immigration laws.

In re Day, 27 Fed. Rep., 678.
In re Cummings, 32 Fed. Rep., 75.
In re Dietze, 40 Fed. Rep., 324.
In re Vito Rullo, 43 Fed. Rep., 62.
In re Bucciarello, 45 Fed. Rep., 463.

40 The writ of *habeas corpus* is in no sense a writ of review. It is not, however, without possible advantage to the petitioner, for she may thereby bring in question the jurisdiction of and the regularity of the proceedings before the inspector. The court upon the hearing is limited to three points of inquiry, namely:

1. Had the inspector jurisdiction?
2. Has he exceeded his jurisdiction?
3. Had he any legal or competent evidence on which to exercise a judgment as to the right of the petitioner under the law to land?

In re Stupp, 12 Blatch., 501.

1. The office of the inspector is created by the act, and he has been duly appointed, and his action has been taken in conformity with its provisions. His jurisdiction is therefore
41 incontestible.

2. The burden is on the petitioner to show that the inspector has not acted in accordance with his duty and kept within its limits. No proof thereupon is adduced, and there is nothing to show that he has exceeded his jurisdiction.

3. From the report of the inspector, in evidence, it is manifest that he made the "inspection" required by the act, and that he had before him some evidence upon which to base his judgment and conclusion. In the absence of proof or intimation to the contrary it must be presumed that such evidence was legal and competent and furnished a sufficient basis for his action in the premises.

42 *In re* Jung Ah Lung (11 Saw., 211), wherein a Chinese immigrant who had been refused landing by the collector was brought before the district court for the northern district of California upon a writ of *habeas corpus*, Judge Hoffman held that the court was not bound or controlled by the decision of the collector or his deputy adverse to the right of said immigrant to land, but that the court had power to hear evidence upon and determine said right. The decision of the court was sustained by the circuit court on appeal, and the judgment of the latter court was affirmed by the supreme court. An examination of the opinion of Judge Hoffman, however, discloses the fact that, recognizing the right of the

immigrant to a judicial investigation and judgment, he de-
43 cides that these may be secured by a hearing under the writ.

"The collector," he says, "is not of necessity a lawyer. He discharges his duties by deputy. He is not authorized to administer oaths to witnesses nor to compel their attendance. The discharge by him of his duties heretofore supposed to belong to the judicial department of the Government would be almost impracticable unless the other duties of his office be neglected. It is believed that in this class of cases the collector has rarely personally concerned himself with their examination."

Undoubtedly the circuit court and the supreme court, in affirming the decision of the district court, were controlled by the same consideration—the fact that the immigrant was entitled to have his right to land examined and adjudicated by a competent ju-
44 dicial tribunal. Such a tribunal the collector's office manifestly was not. By the act under consideration, however, such a tribunal is created with power and authority to make a complete examination into and adjudication upon the rights of this petitioner, and by the act the decision of said tribunal is made final unless appeal be taken to other tribunals named in the act. Such examination and adjudication have been lawfully made, and they cannot be reviewed or called in question by this court, and the right of the petitioner to land cannot be tried in this proceeding. The effect of the opposite rule, if carried to its logical conclusion, would be to give to a felon, regularly tried and convicted by a competent court, the right of retrial before a court of his own choosing, without a jury, upon his own affidavit that he was unlawfully
45 restrained of his liberty.

Petitioner's counsel calls attention to section 13 of the act. It is obvious that this section does not in any manner relate to any question which is or might properly be here under consideration, but merely provides that all causes arising under the act may be brought in either the circuit or district court.

I therefore find, and do report, that the right of the petitioner to land has been regularly tried and determined by a duly constituted and competent tribunal having jurisdiction in the premises.

And I do further report that, in my opinion, the finding or judgment of said tribunal cannot be reviewed by this court, upon this proceeding or otherwise, or by any court or tribunal except-
46 ing as provided by the act of Congress of March 3, 1891.

That the court cannot, in this proceeding or otherwise, inquire into the question of the right of the petitioner to land.

That the petitioner is not unlawfully restrained of her liberty, as alleged in the petition herein.

That judgment should be entered herein that the writ be dismissed.

Respectfully submitted, S. C. HOUGHTON,
Commissioner United States Circuit Court,
Northern District of California.

Order.

No exception having been taken or filed to the foregoing report, let it stand confessed and the party remanded and writ discharged.
June 10, 1891.

(Signed) SAWYER,
Circuit Judge.

Endorsed: Filed May 23, 1891. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

47 *Judgment of Remand.*

In the Circuit Court of the United States, Northern District of California.

In the Matter of NISHIMURA EKIU on *Habeas Corpus*. No. 11292.

This matter having been regularly brought on for hearing before the court and the judge thereof upon the issues joined herein, the United States attorney, appearing and intervening on behalf of the United States, and the same having been duly heard and submitted and due consideration therein had, it is by the court and the judge thereof now here ordered and adjudged—

That Nishimura Ekiu, in whose behalf the writ of *habeas corpus* herein was sued out, was not at the date of said petition illegally restrained of her liberty, as alleged therein.

It is therefore ordered that *he* be remanded by the marshal to the custody from which *he* has been taken.

Entered this 10th day of June, 1891.

L. S. B. SAWYER, *Clerk.*

48 Endorsed: No. 11292. United States circuit court for the northern district of California. *In re* Nishimura Ekiu on *habeas corpus*. Certified copy of judgment of remand. Filed June 10, 1891. L. S. B. Sawyer, clerk. Ent'd Judg't Reg. No. 9, p. 425.

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

I hereby certify that the foregoing is a true copy of an original judgment in the therein-entitled matter.

Witness my hand and the seal of the said circuit court this 10th day of June, 1891.

L. S. B. SAWYER, *Clerk*,
By —— ——, *Deputy Clerk.*

49 *Exceptions to Commissioner's Report.*

In the Circuit Court of the United States, Ninth Judicial Circuit, in and for the Northern District of California.

In the Matter of NISHIMURA EKIU on *Habeas Corpus*. No. 11292.

The petitioner herein excepts to the report of the commissioner herein upon the following grounds, viz:

First. The commissioner erred in refusing to hear any testimony upon the petition herein.

Second. The commissioner erred in deciding that he had no jurisdiction in this proceeding.

Third. The commissioner erred in deciding that the decision of the inspector of immigration was and is final and conclusive herein.

Fourth. The commissioner erred in the whole and each
50 and every part of his report and recommendation herein.

Fifth. The commissioner erred in recommending a judgment and order of remand herein.

Sixth. The commissioner erred in not recommending an order and judgment of discharge herein.

EDWARD LANDE,
Attorney for Petitioner.
LYMAN I. MOWRY,
Of Counsel.

Endorsed: Filed June 12, 1891. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

51 At a stated term, to wit, the July term, A. D. 1891, of the circuit court of the United States of America of the ninth judicial circuit in and for the district of California held at the court-room, in the city and county of San Francisco, on Tuesday, the 14th day of July, in the year of our Lord one thousand eight hundred and — one.

Present: The Honorable Lorenzo Sawyer, circuit judge; the Honorable James H. Beatty, United States district judge, district of Idaho.

Order, &c.

In the Matter of NISHIMURA EKIU on *Habeas Corpus*. No. 11292.

It is ordered that the judgment entered herein June 10, 1891, and the order of June 29, 1891, submitting the exceptions herein to the court for consideration and decision, be, and the same are hereby, respectively vacated and set aside.

The exceptions of petitioner to the report of S. C. Houghton, Esq., commissioner or referee, came on this day to be heard. L. I. Mowry, Esq., appeared for said petitioner and said exceptions, and W. G. Witter, Esq., assistant United States attorney, for the United States of America, intervenors, in support of said report, and were argued and submitted to the court for consideration and decision.

52 In the Circuit Court of the United States, Northern District of California.

In the Matter of NISHIMURA EKIU on *Habeas Corpus*. No. 11292.

This matter having been regularly brought on for rehearing before the court and the judge thereof upon the issues joined herein,

the United States attorney appearing and intervening on behalf of the United States, and the same having been duly heard and submitted and due consideration therein had, it is by the court and the judge thereof now here ordered and adjudged—

That Nishimura Ekiu, in whose behalf the writ of *habeas corpus* herein was sued out, was not at the date of said petition illegally restrained of her liberty, as alleged therein.

It is therefore ordered that she be remanded by the marshal to the custody from which she has been taken, to wit, to the custody of J. L. Hatch, immigration inspector for the port of San Francisco, to be dealt with as he may find that the law requires upon either the present testimony before him or that and such other as he may deem proper to take.

Entered this 24th day of July, 1891.

L. S. B. SAWYER, *Clerk.*

53 Endorsed: No. 11292. United States circuit court for the northern district of California. *In re* Nishimura Ekiu on *habeas corpus.* Certified copy of judgment of remand. Filed July 24, 1891. L. S. B. Sawyer, clerk.

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

I hereby certify that the foregoing is a true copy of an original judgment in the therein-entitled matter.

Witness my hand and the seal of the said circuit court this 24th day of July, 188–.

[SEAL.] L. S. B. SAWYER, *Clerk,*
By —— ——, *Deputy Clerk.*

54 I, L. S. B. Sawyer, clerk of the circuit court of the United States for the ninth judicial circuit, northern district of California, do hereby certify that the foregoing papers hereto annexed constitute the judgment-roll in the therein-entitled matter.

[SEAL.] Attest my hand and the seal of said circuit court this 24th day of July, 1891.

L. S. B. SAWYER, *Clerk.*

Endorsed: Judgment-roll. Filed July 24th, 1891. L. S. B. Sawyer, clerk.

55 *Opinion.*

In the Circuit Court of the United States for the Northern District of California.

In the Matter of NISHIMURA EKIU on *Habeas Corpus.* No. 11292.

This is the case of a Japanese woman who was refused permission to land by the proper officer under the act of March 3, 1891, entitled "An act in amendment to the various acts relative to immigration and importation of aliens under contract or agreement to perform labor." Session laws 1890–'91, 1085. The re-

port of the commissioner to whom the case was referred, recommending a remand, states the facts very fully, to which reference is made. I am satisfied that the report should be confirmed and the petitioner remanded. The act provides "that
56 upon the arrival by water at any place within the United States of any alien immigrants it shall be the duty of the commanding officer and the agents of the steam or sailing vessel by which they come to report the name, nationality, last residence, and destination of every such alien before any of them are landed to the proper inspection officers, who shall thereupon go or send competent assistants on board such vessel, and there inspect all such aliens, or the inspection officers may order a temporary removal of such aliens for examination at a designated time and place, and then and there detain them until a thorough inspection is made; but such removal shall not be considered a landing during the pendency of such examination." * * * "The inspection officers and their assistants shall have power to administer oaths and take and
57 consider testimony touching the right of any such aliens to enter the United States; all of which shall be entered of record." * * * "All decisions made by the inspection officers or their assistants touching the right of any alien to land, when adverse to such right, shall be final unless appeal be taken to the superintendent of immigration, whose action shall be subject to review by the Secretary of the Treasury."

Thus it will be seen that the law provides an officer who shall make the examination, determine whether the proposed immigrant is entitled to land or not, investing the officer with power to administer oaths, examine witnesses, and to decide the case, making his decision final "unless appeal be taken to the superintendent of immigration, whose action shall be subject to review by the Secretary of the Treasury." There being a proper tribunal provided for
58 the exercise of this judgment with two appeals, this court is not authorized to step in and interfere with the exercise of this jurisdiction, and especially before the case has gone through the course of procedure pointed out and the remedy by appeals exhausted. It is claimed, however, that the law is unconstitutional. I do not think so. It is certainly competent for the United States to exclude foreigners from entering the country whose presence is deemed injurious to the people and Government of the United States, and, having this authority, they must have power to provide some means for summarily ascertaining the qualifications of those seeking to enter. The parties included in the act referred to stand upon a very different footing from those who have been born in the country attempting to return after an absence and those who
59 have lived in the country in pursuance of the laws and acquired rights under the Constitution, treaties, and laws of the United States. Whatever the rights of such parties may be, these parties have never been in the country or subject to its Constitution and laws, and they have acquired no rights whatever under them. They are seeking to enter for the first time and must submit to the

conditions imposed and the course of procedure appointed by Congress for determining their right to enter.

The law, I have no doubt, is constitutional. See numerous cases cited by the commissioner bearing upon the several questions raised. Among them: *In re* Day, 27 Fed. Rep. 678; *In re* Cummings, 32 *Ib.*, 75; *In re* Dietz, 40 *Ib.*, 324; *In re* Vito Ruello, 43 *Ib.*, 62; *In re* Bucciarello, *Ib.*, 463. I have no doubt that the law is constitutional; that the officers authorized by the act have jurisdiction, and
60 that their determination within their jurisdiction is conclusive.

Let the report of the commissioner be confirmed and the petitioner remanded to the custody of J. L. Hatch, immigration inspector, to be dealt with as he may find that the law requires, upon either the present testimony before him or that and such other as he may deem proper to take.

Let a similar order be entered *In re* Tanchi Mevo, No. 11293; *In re* Watanabe Toki, No. 11294, and *In re* Tanaka Yoni, No. 11295.

(Signed) SAWYER,
Circuit Judge.

(Signed) BEATTY,
District Judge.

Endorsed: Filed July 24, 1891. L. S. B. Sawyer, clerk.

61 At a stated term, to wit, the July term, A. D. 1891, of the circuit court of the United States of America of the ninth judicial circuit in and for the northern district of California, held at the court-room, in the city and county of San Francisco, on Thursday, the 30th day of July, in the year of our Lord one thousand eight hundred and ninety-one.

Present: The Honorable Lorenzo Sawyer, circuit judge; the Honorable James H. Beatty, United States district judge, district of Idaho.

In the Matter of NISHIMURA EKIU on *Habeas Corpus.* No. 11292.

Order Allowing Appeal.

On motion of L. T. Mowry, Esq., of counsel for petitioner, it is ordered that an appeal to the Supreme Court of the United States from the judgment heretofore entered herein be, and the same hereby is, allowed, and that a certified transcript of the record and all proceedings herein be forthwith transmitted to the Supreme Court of the United States.

62 *Bond on Appeal.*

In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

In the Matter of NISHIMURA EKIU on *Habeas Corpus.*

Whereas the petitioner, Nishimura Ekiu, in the above-entitled

action is about to appeal to the Supreme Court of the United States from an order and judgment of remand made and entered in said action in the said circuit court:

Now, therefore, in consideration of the premises and of such appeal, we, the undersigned, residents of the city and county of San Francisco, State of California, do hereby jointly and severally undertake and promise on the part of the appellant that the said appellant will pay all damages and costs which may be awarded
63 against her on the appeal or on a dismissal thereof not exceeding five hundred ($500.00) dollars; to which amount we acknowledge ourselves jointly and severally bound.

Witness our hands and seals this 13th day of August, 1891.

WM. F. SAYERS. [SEAL.]
G. HASAKAWA. [SEAL.]

Acknowledged before me this 13th day of August, 1891.

F. D. MONCKTON,
Commissioner U. S. Circuit Court,
Northern District of California.

UNITED STATES OF AMERICA, }
Northern District of California, } ss:

Wm. F. Sayers and G. Hasakawa, being duly sworn, each for himself deposes and says that he is a householder in said district and is worth the sum of five hundred dollars exclusive of property exempt from execution and over and above all debts and liabilities.

64

WM. F. SAYERS.
G. HASAKAWA.

Sworn to before me this 13th day of August, 1891.

F. D. MONCKTON,
Commissioner U. S. Circuit Court,
Northern District of California.

Endorsed: Form of bond and sufficiency of the sureties approved. (Signed) Sawyer, judge. Filed August 13, 1891. L. S. B. Sawyer, clerk.

65 In the Circuit Court of the United States of the Ninth Judicial Circuit in and for the Northern District of California.

In the Matter of NISHIMURA EKIU on *Habeas Corpus.*

I, L. S. B. Sawyer, clerk of the circuit court of the United States of the ninth judicial circuit in and for the northern district of California, do hereby certify that the foregoing sixty-four written and printed pages, numbered from 1 to 64, inclusive, are a full, true, and correct copy of the record and of all proceedings in the therein and above entitled matter, and that the same together constitute the transcript on appeal to the Supreme Court of the United States.

Witness my hand and the seal of said circuit court this
66 25th day of August, A. D. 1891.

[Seal U. S. Circuit Court, Northern Dist. Cal.]

L. S. B. SAWYER, *Clerk.*

67 UNITED STATES OF AMERICA, *ss:*

To the United States of America and Charles A. Garter, Esq., United States district attorney in and for the northern district of California, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the 5th day of October, A. D. 1891, pursuant to an order allowing an appeal from the circuit court of the United States in and for the northern district of California to the Supreme Court of the United States in the matter entitled *In re* Nishimura Ekiu, to show cause, if any there be, why the judgment in the said matter mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Lorenzo Sawyer, U. S. circuit judge for the ninth circuit, this 13th day of August, A. D. 1891, and of the Independence of the United States the one hundred and sixteenth.

SAWYER,
Circuit Judge.

68 [Endorsed:] In the Supreme Court of the United States. *In re* Nishimura Ekiu on *habeas corpus.* Citation. Filed August 13, 1891. L. S. B. Sawyer, clerk.

Service of a copy of the within citation admitted this 13th day of August, 1891.

W. G. WITTER,
As't U. S. Att'y.

Endorsed on cover: Case No. 14,867. N. California C. C. U. S. No. 1393. Nishimura Ekiu, appellant, *vs.* The United States and Charles A. Garter, U. S. district attorney in & for the northern district of California. Filed September 29, 1891.

Office Supreme Court U. S.
FILED
OCT 13 1891
JAMES H. McKENNEY
CLERK

No. 1393

IN THE SUPREME COURT

OF THE

UNITED STATES

In the matter of NISHIMURA EKIU

On Habeas Corpus.

APPELLANT'S BRIEF

LYMAN I. MOWRY,
Attorney for Appellant.

W. H. H. MILLER, ATTORNEY GENERAL,
For Respondent,

Filed, ... *1891.*

..... *Clerk,*

By ..... *Deputy Clerk.*

W. M. HINTON & CO., Printers, 521 Clay Street, San Francisco.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

In the Matter of NISHIMURA EKIU
on Habeas Corpus.

Appellant's Brief.

This is an appeal from an order and judgment of remand made and entered by the Circuit Court of the United States for the Northern District of California in a proceeding upon Habeas Corpus to determine the right of the petitioner Nishimura Ekiu (a Japanese woman), to enter and remain in the United States.

It appears from the record, that on the 7th day of May, 1891, the steamship Belgic arrived at the port of San Francisco from the port of Yokohama, Empire of Japan, having on board among other alien immigrants the said Nishimura Ekiu, a female subject of the Emperor of Japan; that on the 13th day of May, 1891, one William H. Thornley, Commissioner of Immigration of the State of California, inspected said Nishimura Ekiu and thereafter and on the same day, removed her from said steamship to the Methodist Episcopal Chinese Mission Home in the City and County of San Francisco, State of California, for examination, and thereafter and upon the same day made a report in writing to the Collector of the Port of San Francisco, which said report and the letter of said Thornley to the Collector, and the Collector's letter in reply thereto are the only record of his action in this matter; that thereafter and on the same day, a writ of Habeas Corpus was sued out of the United States Circuit Court for the Northern District of California, on behalf of said Nishimura Ekiu and directed to said Thornley, and that said Thornley made return to said writ that he held her in his custody.

That on the 14th day of May, 1891, and while said Nishimura Ekiu was in the custody of said Thornley as Commissioner of Immigration for the State

of California, at said Chinese Mission Home, and pending said proceedings on Habeas Corpus, the Secretary of the Treasury of the United States appointed J. L. Hatch, Inspector of Immigration at the Port of San Francisco; that said Thornley delivered over the custody of said Nishimura Ekiu to said Hatch, who detained her at said Chinese Mission Home until she was placed in the custody of the United States Marshal by order of the United States Circuit Court in said Habeas Corpus proceedings, and that she has never been in the custody of the master of the steamship Belgic, since her removal from said steamship, by said Thornley on the 13th day of May, 1891.

That on the 16th day of May, 1891, said J. L. Hatch, Inspector as aforesaid, inspected said Nishimura Ekiu, and made a report to the Collector of the Port of San Francisco, which said report is the only record of his action in this matter.

That the United States by Charles A. Garter, United States District Attorney and said J. L. Hatch, Inspector as aforesaid, intervened in said Habeas Corpus proceedings,and that on the 24th day of July, 1891, the said Circuit Court determined that it had no jurisdiction in the matter, and remanded said Nishimura Ekiu into the custody of said Inspector J. L. Hatch,to be dealt with accord- to law.

The petition for the writ herein shows, that said petitioner is unlawfully restrained of her liberty by Wilalim H. Thornley in the City and County of San Francisco in this:

That said Thornley claims that he is Commissioner of Immigration for the Port of San Francisco; that said petitioner is a subject of the Emperor of Japan; that she cannot be allowed to land under the provisions of the Act of Congress regulating immigration, which went into operation on the 1st day of April, 1891, and that he restrains her of her liberty by virtue of authority vested in him by said Act.

The petition further shows that said petitioner does not come within any of the restrictions or prohibitions of said Act or any Act relating to the subjects of the Emperor of Japan.

The intervention of the United States alleges upon information and belief.

That said petitioner is lawfully detained by the master of the steamship Belgic in compliance with the provisions of an Act of Congress of the United States entited "An Act in amendment to the various Acts relating to immigration and the importation of aliens under contract or agreement, to perform labor," approved March 3, 1891, for the following reasons:

That at all of the times hereinafter and in said writ mentioned, said Thornley was the *Commissioner of Immigration* at the port of San Francisco and was acting under the special instructions of the Secretary of the Treasury in the enforcement of the provisions of said Act; that said person was an alien immigrant; that said Thornley examined into her condition, and upon said examination found her to be an alien immigrant from Yokohama, empire of Japan; that she was a female without any means of support, without relations or friends in the United States and that she was a person unable to care for herself and *liable to become a public charge* and inhibited from landing under the provisions of said Act of 1891, and that he, said Thornley, prohibited her from landing at the port of San Francisco, and, thereupon, reported the same to T. G. Phelphs, Collector of said port, and, thereupon, he decided that she was not entitled to land under the provisions of said Act; that said finding and decision are not reviewable by said Court and are final and conclusive; that said Court has no jurisdiction or authority to review the finding and decision of the said Commissioner and the said Collector under the provisions of said Act.

The intervention of J. L. Hatch alleges upon information and belief, that said petitioner has been and now is lawfully detained by the master of the

steamship Belgic in compliance with the several Acts of Congress of the United States (enumerating the several Acts in regard to immigration) and for the following reasons:

That since the issuance of said writ he, the said Hatch, has been appointed, and has duly qualified as an Inspector of Immigration at the port of San Francisco as contemplated by the said last-named Act of March 3, 1891, and that since his appointment he has been acting in the discharge of his duties. He then alleges an examination and decision by himself and the Collector, as is alleged in the intervention of Thornley, and that said decisions are final and conclusive, unless appeal be taken to the Superintendent of Immigration, whose action can only be reviewed by the Secretary of the Treasury.

From the facts disclosed by the record I contend that the Circuit Court erred in deciding that it had no jurisdiction and that the decisions of the Commissioner and Inspector of Immigration and Collector of the Port are final and conclusive for the reasons following:

First. That the United States District and Circuit Courts may inquire by the writ of Habeas corpus whether the Commissioner of Immigration, the Inspector of Immigration and the Collector of the Port had jurisdiction and had before

them competent and legal evidence of facts whereon to pass judgment that the petitioner came within the excluded and prohibited classes, and did not arbitrarily refuse a landing without any legal or competent evidence showing that she came within said classes, and did not, arbitrarily, decide against all of the evidence.

Second.—That if it was the intention of Congresss to make the decision of the Inspector final and conclusive, so as to deprive the courts of any inquiry into the right of the petitioner to land then; that the Act violates Article III, of and the V Amendment to the Constitution of the United States, and is, therefore, to that extent, void.

Third.—That the Court may go into the whole case on its merits by the writ of Habeas Corpus.

Fourth.—That the Act itself gives jurisdiction to the District and Circuit Courts of the United States.

FIRST.

That the United States District and Circuit Courts may inquire by the writ of habeas corpus whether the Commissioner of Immigration, the Inspector of Immigration and the Collector of the Port had jurisdiction, and had before them competent and legal evidence of facts, whereon to pass judgment that the petitioner came within the

excluded and prohibited classes, and did not arbitrarily refuse a landing without any legal or competent evidence showing that she came within said classes, and did not arbitrarily decide against all of the evidence.

See—In Re Day, 27 Fed. Rep., 681;
In Re Cummings, 32 Fed. Rep. 75;
In Re Dietz, 40 Fed. Rep. 324;
In Re Vito Rullo, et al. 43 Fed. Rep. 62;
In Re Bucciarello, 45 Fed. Rep., 463;
In Re Stupp, 12 Blatchf, 519.

Thornley was a Commissioner of Immigration appointed by the Governor of the State of California under contract with the Secretary of the Treasury of the United States, and, therefore, had no power or authority to act in the premises or to decide upon the rights of the petitioner.

See Act of March 3d, 1891, Sec. 8.

The act having deprived Thornley of all power and authority in the matter he was a mere usurper.

Thornley having removed the petitioner from the ship and brought her ashore within the United States, there is no power or authority in any person or executive officer to remove her from the United States except by judicial proceedings, in that behalf, under Section 11, of said Act of March 3d, 1891.

It will not be contended that an Inspector of Immigration can seize a person by virtue of any power vested in him by the several immigration laws and upon the plea that he is an alien immigrant, and comes within the prohibited classes place, such person on board of a ship and deport him without any hearing or trial in a judicial tribunal. If such power were vere vested in Inspectors by the Acts the Courts would not hesitate to declare them unconstitutional.

Intervenor Hatch had no power or authority in the premises.

First—Because he was not legally and properly appointed an Inspector of Immigration.

Second—Because the petioner was ashore and within the United States before his appointment.

The Act of March 3d, 1891, creates a Bureau of Immigration, and provides for the appointment by the President of the United States, by and with the advice and consent of the Senate of a Superintendent of Immigration, who shall have his office in the city of Washington. As there is no provision in the Act for the appointment of Inspectors of Immigration, such appointment would necessarily and by the universal practice of the Government be in the Superintendent of Immigration as the head of the Department of Immigration. The Superintendent of Immigration was appointed by the

President of the United States long after the appointment of Hatch by the Secretary of the Treasury, and long after Hatch had decided upon the rights of the petitioner.

The petitioner having been brought ashore and within the United States by Thormley, there was nothing for Hatch to act upon, because if he were legally appointed Inspector of Immigration his examination must be made on board of the ship or after removal by him from the ship temporarily for examination. He has no power or authority to examine into the status of aliens already ashore in the United States.

Thornley had no right to turn the petitioner over to Hatch at the Mission Home, and Hatch had no right to take her into his custody and detain her there.

The Collector of the Port had no jurisdiction to decide anything in the matter. Nowhere in any of the Acts is the power of decision vested in him, his duties do not commence until the Inspector decides and makes his report, he has no power or authority to review the findings and decision of the Inspector, his only duty is to see that the prohibited person departs.

In Re Buciarrello, 45 Fed. Rep., 463.

In Re Day, 27 Fed. Rep., 681, Sub. 2.

Neither Thornley, Hatch, nor the Collector obeyed the instructions of the Act.

"The inspection officers and their assistants shall have power to administer oaths and to take and consider testimony touching the rights of any such aliens to enter the United States, all of which shall be entered of record"

Act of March 3, 1891, Sec. 8.

The evidence shows the whole record made by Thornley, Hatch and the Collector, and that consists of Thornley's letter to the Collector, the Collector's reply, Thornley's report to the Collector and Hatch's report to the Collector. There is nothing in this record that shows that either Thornley, Hatch or the Collector administered any oaths, took or considered any testimony touching the rights of the petitioner to enter the United States or entered the same of record. Thornley's letter to the Collector shows that he intended to take testimony because he removed Nishimura Ekiu from the ship to the Mission Home, but Hatch received his appointment on the day following the removal and Thornley then ceased to act. It is evident from an examination of his report to the Collector that Hatch did nothing but make a stereotyped copy of Thornley's report.

The reports of Thornley and Hatch and the letter of the Collector thereto attached show that the decisions of Thornley, Hatch and the Collector were arbitrary, irregular and without testimony.

Those reports show upon their face that the petitioner was and is not "liable to become a public charge," but on the contrary they clearly show without conflict or contradiction that the petitioner was and is fully able to care for herself.

Can it be said that a woman twenty-five years of age, in full vigor and health, with money enough to provide for her wants until she obtains employment in a land where laborers find ready employment is "liable to become a public charge." There was not one in one thousand of the pioneers of California who was better equipped for the struggle of life when he arrived on this coast than is Nishimura Ekiu.

The language "liable to become a public charge" does not apply to able bodied persons who can earn a living by manual labor. It means aged and decrepit persons without means, who are unable to perform labor and are without friends or relations to care for them, infants of tender years who are unable to perform labor, and are without friends or relatives to care for them, and diseased or deformed persons who are unable to perform labor and have no means and are without friends or relatives to care for them.

In Re Day, 27 Fed. Rep., 681.

Is there such a record in this case as is contemplated by Sec. 8 of the Act of March 3, 1891?

The powers conferred upon Inspectors by the Act are of such an extraordinary and far-reaching character that it was the evident intention of Congress that such a record of their proceedings should be kept as would be of some service to the Government in case diplomatic complications should arise from the execution of the law.

Notwithstanding that some of the cases heretofore cited hold that the decision of the Inspector upon the facts is not reviewable by the Courts yet the Court did enquire into the facts in the cases of Cummings, Dietz and Bucianelle.

Second. That if it was theintention of Congres to make the decision of the Inspector final and conclusive, so as to deprive the Courts of any inqury into the right of the petitioner to land then, that the Act violates Article 3d of and the 5th Amendment to the Constitution of the United States and is therefore to that extent void.

The powers vested by the Act in the Inspectors of Immigration are judicial. They are to determine first, whether the immigrant is an alien and second, whether the immigrant comes within the prohibited classes. And in the determination of these questions, they are to administer oaths, take and consider testimony, render judgment, make their proceedings into a record and report their judgments to the Collector of the Port. Are not

these acts from their very nature judicial? Is not the Inspector of Immigration an executive officer? Does not the Act vest in this executive officer judicial powers?

The 3d Article of the Constitution of the United States vests the judicial power of the United States in the Supreme Court and such other inferior courts as Congress shall from time to time ordain and establish, and it vests the *whole* judicial power in such courts.

Martin *vs.* Hunter's Lessee's, 1 Wheat, 303.

It is not in the power of Congress to vest in in the courts or the judges thereof, executive or legisiative functions, nor is it in the power of Congress to vest in the executive officers judicial functions.

Note to Hayburn's Case, 2 Dall, 409.
Note by Taney, Ch. J., 13 How. 52.
Tennessee *vs.* Davis, 10 Otto. 257.

The Act violates the 5th Amendment to the Constitution, in that it deprives the petitioner of her liberty without due process of law.

Due process of law is its regular administration through courts of justice by timely and regular course of proceedings to judgment and execution, it includes parties, regular proceedings and a trial according to the settled course of proceedings.

Den *vs.* Hoboken, etc. Co., 59 U. S. 372.
Ries *vs.* City of Watertown, 86 U. S. 72.
Hogan *vs.* Reclamation District No. 8, 111 U. S.573.
Portland *vs.* Bangor, 65 Me. 120.
Barker *vs.* Kelley, 11 Minn. 480.
Dwight *vs.* Williams, 4 McLean, 586.
Westervelt *vs.* Gregg, 12 N. Y. 202.
Rowan *vs.* State, 30 Wis. 129.
Huber *vs.* Reiley, 53 Penn. St. 112.
State *vs.* Becht, 23 Minn. 413.

Will it be contended that the proceedings of Thornley, Hatch and the Colletcor in this case were due process of law?

It seems to be conceded by the opinion of the learned Circuit Jndge herein, that the Court would have jurisdiction to hear and determine upon habeas corpus the rights of a person who claimed to have been born in the United States or to have resided in the United States, notwithstanding the Act, and notwithstanding a decision by an Inspector of Immigration adverse to his right to land, or in other words that a decision by an Inspector of Immigration that a person is an alien immigrant and comes wifhin the prohibited classes and therefore cannot land, is not final and conclusive where such person claims to be a citizen of the United States or claims to have resided

in the United States, but that in such cases the United States Courts have jurisdiction to review the decisions of the Inspector and hear and determine the facts, and that the decision of the Inspector is only final and conclusive so as to oust the courts of jurisdiction when the alien immigrant is trying to land on the shores of the United States for the first time.

In the argument before the Circuit Court the learned Judge asked counsel the following question: "Conceding that the proceedings in this case before the Commissioner and Inspector of Immigration and the Collector of the Port were not due process of law within the meaning of the Constitution, is the petitioner in a position to demand due process of law and was it the intention of the framers of the Constitution to extend its protecting aegis over persons who are trying to get into the United States, or was it not their intention that the Constitution should only protect citizens and residents of the United States?"

My answer to that question and to the same idea expressed in the opinion, was and is that the policy of the United States and the people thereof from the formation of the Government up to 1882 was to encourage foreign immigration. We invited the oppressed of all nations to come and partake of our laws and our liberties, we threw

open our public lands and our mines to them, we made citizens of them upon short probation, in fact we did everything in reason and out of reason to encourage aliens to come to our shores. For the first time in 1882 the policy of our Government and people changed by the passage of the Chinese Restriction Act, so called, followed in 1888 by the Chinese Exclusion Act.

The Constitution of the United States must be read in the light of the time of its creation, it must be construed with the then existing policy of the people. The Constitution does not say that no *citizen* or *resident* shall be deprived of life, liberty or property without due process of law, but that no *person* shall be deprived of life, liberty or property without due process of law. Person is broad enough to include every human being within the jurisdiction. And *person* is the word used throughout the Constitution where human rights are defined and protected. The petitioner on board of a ship tied up to the wharf in the port of San Francisco, is within the jurisdiction of the United States, and is one of those persons mentioned in the 5th and 14th Amendments to the Constitution of the United States who cannot be deprived of liberty without due proeess of law.

Third.—That the Court may go into the whole

case on its merits by the writ of habeas corpus.

In re Jung Ah Lung, 124 U. S. 621:

Act March 3d, 1891, Sec. 11.

Fourth.—That the Act itself gives jurisdiction to the District and Circuit Courts of the United States.

The Act itself gives jurisdiction to the Circuit and District Courts over all causes, civil and criminal arising under any of the provisions of the Act.

Act of March 3, 1891, Sec. 13.

The writ of habeas corpus is the remedy which the law gives for the enforcement of the civil right of personal liberty. Proceedings to enforce civil rights are civil proceedings.

In Re Tom Tong, 108 U. S., 556.

The petition for the writ of habeas corpus and the proceedings thereunder in this case are a cause civil arising under the provisions of the Act of March 3, 1891, and therefore the Circuit Court had jurisdiction to hear and determine the cause by virtue of section 13 of the Act.

From the foregoing and the record on file herein I respectfully submit that the judgment of remand herein should be reversed and the petitioner discharged from custody.

Respectfully submitted.

LYMAN I. MOWRY,

Attorney for Appellant.

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In the Supreme Court of the United States.

OCTOBER TERM, 1891.

NISHIMURA EKIU, APPELLANT,
vs.
THE UNITED STATES AND CHARLES A. Garter, United States district attorney, etc.
No. 1393.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

BRIEF FOR THE APPELLEES.

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The petitioner, Nishimura Ekiu, is a subject of the Emperor of Japan (fol. 2.)

It is neither alleged in the petition of the appellant nor claimed in the brief of her counsel that any right inures to her by reason of any paragraph or provision of any treaty.

Her rights in the premises are to be determined by the Constitution, the statutes, and the decisions of the United

States, so far as they may be applicable, and when these have no application, she is only entitled to claim such rights as are given her by the law of nations.

She is not to be considered as a person lawfully within the United States, domiciled, or commorant, or in transit through, or even as landed upon its shores.

She is constructively and in legal view on board the S. S. *Belgic*, in the port of San Francisco, claiming that she has the right to land and to go at will in this country.

IMMIGRANT LEGISLATION OF THE UNITED STATES BEARING UPON THE QUESTIONS PRESENTED BY THE APPEAL.

By the act of February 19, 1862 (12 Stat., 340), the "Coolie trade" is prohibited, but the statute is so limited as not to apply to "voluntary emigration," and the President is authorized to enforce the act.

The important provisions of this enactment are incorporated into the Revised Statutes (secs. 2158 to 2164), and by section 2163 the President is empowered to direct the examination of vessels in the enforcement of the law.

By the act of March 3, 1875 (18 Stat., 477), the importation of any subject of China, Japan, or any oriental country under a contract for lewd or immoral purposes; or without their free and voluntary consent under a contract for a term of service is prohibited, and such contracts are declared void.

By section 5 the immigration of alien convicts, other than political convicts, and of women for purposes of

prostitution, is forbidden, and inspection of prohibited persons is provided for under the direction of the collector of the port when the vessel arrives. Aliens are restricted to the vessel until the inspection is concluded, and no person certified by the inspecting officer to belong to the forbidden classes shall be allowed to land, except in obedience to judicial process issued pursuant to law.

One feeling aggrieved may apply to a court or judge.

By the act of August 3, 1882, *An act to regulate immigration* (22 Stat., 214), the collection of a head tax of 50 cents for each alien passenger coming by vessel into any port of the United States is authorized and the immigrant fund is provided for.

By section 2, the Secretary of the Treasury is charged with the duty of executing the provisions of the act, and with the business of immigration to the United States. He is authorized to employ a State commission, board, or officer to aid in carrying out the law (and, of course, may use his own subordinates for such purpose), and may establish such rules and regulations and issue such instructions in the premises not inconsistent with law as he shall find to be needful.

Any convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge, shall be reported to the collector of the port and shall not be permitted to land.

It is manifest that the sole supervision and management of the business of immigration to this country is placed in the control of an executive officer, to wit, the Secretary of the Treasury, who is empowered to act

through and by such subordinates and assistants as are recognized by the statutes or are proper by necessary implication.

By the act of February 26, 1885 (23 Stat., 332), the importation of aliens under a contract to perform labor is prohibited, and the contracts referred to are declared void.

The act last cited is amended by the act of February 23, 1887. (24 Stat., 414.)

The full authority of the Secretary of the Treasury to execute the law is recognized, and he is authorized to "establish such regulations and rules and issue from time to time such instructions not inconsistent with law as he shall deem best calculated for carrying out the provisions of this act."

By section 8, as here amended, he may make use of the State board of charities of any State, or any "commission, or any person or persons in any State, whose duty it shall be to execute the provisions of this section," etc.

The appropriation act of October 19, 1888 (25 Stat., 566), amends the act of February 23, 1887, and authorizes "the Secretary of the Treasury, in case he shall be satisfied that an immigrant has been allowed to land contrary to the prohibition of that law, to cause such immigrant within the period of one year after landing or entry to be taken into custody and returned to the country from whence he came at the expense of the owner of the importing vessel, or, if he entered from an adjoining country, at the expense of the person previously contracting for his services.

By the Sundry Civil Appropriation Act of March 2, 1889, an appropriation of $50,000 is made (25 Stat., 957)

out of the immigrant fund provided by the act of August 3, 1882, to carry into effect the contract-labor law of February 26, 1885, as amended by the acts of February 23, 1887, and October 19, 1888. Thus by Congressional construction the several acts are linked together.

In tracing the legislation relating to the matter involved we now come down to the act of March 3, 1891 (26 Stat., 1084).

This act is entitled "An act in amendment to the various acts relating to immigration and the importation of aliens under contract or agreement to perform labor."

The title and the provisions of this act reach out to and supplement all previously existing immigration legislation except that relating to Chinese persons.

Certain specified classes of aliens are to be excluded from admission into the United States, "in accordance with existing acts," etc.

These classes, without noting certain exceptions made, not of consequence here, are idiots, insane persons, paupers, or persons likely to become a public charge, persons suffering from a loathsome or a dangerous contagious disease, persons who have been convicted of a felony or other infamous crime or misdemeanor involving moral turpitude, polygamists, and certain assisted persons, as specified. The exclusion of contract-labor aliens is recognized as continuing.

A superintendent of immigration is authorized to be appointed, but it is specially provided (sec. 7) that: "The superintendent of immigration shall be an officer of the Treasury Department, under the control and supervision

of the Secretary of the Treasury, to whom he shall make annual reports in writing of the transactions of his office, together with such special reports, in writing, as the Secretary of the Treasury shall require."

Section 8 of this act is as follows:

> SEC. 8. That upon the arrival by water at any place within the United States of any alien immigrants it shall be the duty of the commanding officer and the agents of the steam or sailing vessel by which they came to report the name, nationality, last residence, and destination of every such alien, before any of them are landed, to the proper inspection officers, who shall thereupon go or send competent assistants on board such vessel and there inspect all such aliens, or the inspection officers may order a temporary removal of such aliens for examination at a designated time and place, and then and there detain them until a thorough inspection is made. But such removal shall not be considered a landing during the pendency of such examination. The medical examination shall be made by surgeons of the Marine Hospital Service. In cases where the services of a marine hospital surgeon can not be obtained without causing unreasonable delay the inspector may cause an alien to be examined by a civil surgeon, and the Secretary of the Treasury shall fix the compensation for such examination. The inspection officers and their assistants shall have power to administer oaths and to take and consider testimony touching the right of any such aliens to enter the United States, all of which shall be entered of record. During such inspection, after temporary removal, the superintendent shall cause such aliens to be properly housed, fed, and cared for, and also, in his discretion, such as are delayed in proceeding to their destination after in-

spection. All decisions made by the inspection officers or their assistants touching the right of any alien to land, when adverse to such right, shall be final, unless appeal be taken to the superintendent of immigration, whose action shall be subject to review by the Secretary of the Treasury. It shall be the duty of the aforesaid officers and agents of such vessel to adopt due precautions to prevent the landing of any alien immigrant at any place or time other than that designated by the inspection officers, and any such officer or agent or person in charge of such vessel who shall either knowingly or negligently land or permit to land any alien immigrant at any place or time other than that designated by the inspection officers, shall be deemed guilty of a misdemeanor and punished by a fine not exceeding one thousand dollars, or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment.

That the Secretary of the Treasury may prescribe rules for inspection along the borders of Canada, British Columbia, and Mexico so as not to obstruct or unnecessarily delay, impede, or annoy passengers in ordinary travel between said countries: *Provided*, That not exceeding one inspector shall be appointed for each customs district, and whose salary shall not exceed twelve hundred dollars per year.

All duties imposed and powers conferred by the second section of the act of August third, eighteen hundred and eighty-two, upon State commissioners, boards, or officers acting under contract with the Secretary of the Treasury, shall be performed and exercised, as occasion may arise, by the inspection officers of the United States.

Section 10 contemplates the immediate return of those who come unlawfully, and section 11 provides for their return in certain cases within one year after their arrival.

Section 13 is the concluding section of the act, and reads as follows:

> SEC. 13. That the circuit and district courts of the United States are hereby invested with full and concurrent jurisdiction of all causes, civil and criminal, arising under any of the provisions of this act; and this act shall go into effect on the first day of April, eighteen hundred and ninety-one.

I.

THE FACT THAT APPELLANT WAS TRANSFERRED FROM THE VESSEL TO THE HOME MISSION IS WITHOUT CONSEQUENCE.

The counsel for the appellant in his brief (pp. 2, 3) states that Thornley, State commissioner of immigration, inspected the appellant on May 13, and removed her from the steamship to the "Methodist Episcopal Chinese Mission Home in the city;" and on the 14th delivered her to Inspector Hatch, who detained her at said home until she was placed in the custody of the marshal in the habeas corpus proceedings, and that she did not return to the *Belgic* after the 13th.

He claims (p. 9) that Hatch had no authority, "*second*, because the petitioner was ashore and within the United States before his appointment."

And also claims (p. 10) that Thornley had no right to turn petitioner over to Hatch at the home, and that Hatch had no right to take her into his custody and detain her there.

It will be noticed that it appears by the report of Thornley, made when he produced the body in the habeas corpus proceedings, that he says—

> That, by an understanding between the United States attorney and the attorney for the petitioner, said party will remain in the custody of the M. R. Japanese and Chinese Mission, pending a final disposition of the writ. (Fol. 9, p. 4.)

He says further (fol. 27) that he had placed the Japanese women, including Nishimura Ekiu, in the mission, "as the steamer was not a proper place to detain them, until the date of sailing."

Neither of these statements is disclaimed or controverted, and both are to be taken as true for the purposes of this case.

Further than this, by section 8 of the act of 1891, the inspection officers are authorized to make a temporary removal of the aliens, and to detain them until a thorough inspection is made. "But such removal shall not be considered a landing during the pendency of such examination."

It is manifest that there was nothing in the detention of the appellant at the Home that gives any ground of complaint.

II.

THE EXCLUSION OF NISHIMURA EKIU WAS IN ACCORDANCE WITH LAW.

It has been shown that, by acts prior to that of 1891, the Secretary of the Treasury was authorized to make use of State boards, commissions, and officers, in carrying out the immigration enactments.

It is not clear that these provisions are superseded or made void by the act of 1891.

It is true that a construction to that effect may be applied to the last clause of section 8, but it is doubtful whether such was the intention of Congress.

At least it must be held that Thornley was acting as inspector under some authority from the Secretary, and as he had been previously authorized, and had not been superseded, it is not clear that the occasion arose for the performance of these duties by an inspector until there existed an inspector capable of performing them.

But however this may be, the appellant was in the Home, as though on the *Belgic*, and was there inspected by Inspector Hatch, acting under an appointment from the Secretary of the Treasury. He considered the question of her admission into the United States, and decided that she was not entitled to come into the country under its immigrant exclusion laws.

The fact that Thornley had acted upon the case, and had arrived at the same conclusion, can not render void Hatch's action.

The woman arrived in port about May 7th (fols. 18, 24); she remained on the vessel until the 13th, when she went to the Mission Home.

She was examined by Inspector Hatch on Friday, May 15, and Saturday, May 16, and Hatch's intervention alleges (fols. 18, 19)—

> That upon said examination said J. L. Hatch found said person to be an alien immigrant from Yokohama, Empire of Japan; that the said applicant was a female without means of support, without

> relations or friends in the United States, and that said person was a person unable to care for herself and liable to become a public charge, and therefore inhibited from landing; * * * that said person was an immoral person, and in various ways inhibited from landing under the provisions of said act.

That thereupon the inspector prohibited the appellant from landing and reported his action to the collector of the port, and she has not been allowed to land or remain in the United States because of the provisions of the act.

The report of the inspector (p. 10) names the appellant as an alien immigrant, forbidden to land under the act of 1891, and says:

> Passport states that she came in company with her husband, which is not the fact. States that she had been married two years and that her husband had been in the United States one year, but she does not know his address; has $22 and is to stop at some hotel until her husband calls for her.

While the facts presented are few, enough is stated to show that the inspector had jurisdiction of the subject-matter and of the person of the appellant; that he investigated as to the facts concerning the appellant and made the examination contemplated by law, and exercised his judgment in the premises, and came to the conclusion that the applicant was not entitled to land and reported his finding and conclusion to the collector of the port.

It is true that the inspecting officers have power to administer oaths and to take and consider testimony. Whether testimony was taken in this case does not appear.

It can not be obligatory to take testimony when none is needed. When the alien is a moneyless cripple, a person old and admittedly poor, one ascertained by the inspector to be a vagabond, and without means, one that on inspection is found to be a friendless infant of tender years, or an alien immigrant that is satisfactorily ascertained on a summary inspection and examination to be of any of the excluded classes, it surely can not be necessary to go through the forms of taking testimony.

The fact that the collector is not shown to have taken any action after receiving Hatch's report does not touch the validity of the proceedings, because by section 8 the inspection officers are given full control; the officers of the vessel report to them, they inspect, examine, and detain; and it is specially enacted that—

> All decisions made by the inspection officers or their assistants touching the right of any alien to land, when adverse to such right, shall be final unless appeal be taken to the Superintendent of Immigration, whose action shall be subject to review by the Secretary of the Treasury.

III.

THE APPELLANT IS NOT ENTITLED TO CLAIM THE BENEFITS CONFERRED BY OUR CONSTITUTION UPON CITIZENS OF THE UNITED STATES.

The doctrine that any foreigner when he sees fit to come to our shores may at the dock demand, in his own right and for his private benefit, the privileges and immunities given to citizens of the United States by its Constitution, is preposterous.

The Constitution is limited by its nature and purposes and by the terms of its preamble to the people and the territory of the United States.

In *In re Ross* (140 U. S., 453), it is stated (464) that:

> By the Constitution a government is ordained and established "for the United States of America," and not for countries outside of their limits. The guaranties it affords against accusation of capital or infamous crimes except by indictment or presentment by a grand jury, and for an impartial trial by jury when thus accused, apply only to citizens and others within the United States, or who are brought there for trial for alleged offenses committed elsewhere, and not to residents or temporary sojourners abroad.

A.

THE APPELLANT HAS NOT BEEN DEPRIVED OF HER LIBERTY IN VIOLATION OF THE CONSTITUTION.

First. The Constitution has no application to the appellant any more than it has to any other foreigner.

Second. The proceedings provided by statute for the exclusion of prohibited aliens constitute due process of law for the purposes of such exclusion.

It will be noted that she is not deprived of anything; she is only restrained in her liberty to the extent necessary to prevent her from violating our laws.

The summary methods employed are the only ones that are practicable.

The appellant may at any moment free herself if she will return to the country of her sovereign, or will leave the United States. She is withheld from coming in.

This method of exclusion is in line with most of those summary proceedings which protect the public by restricting persons.

Such proceedings do not violate the Constitution.

Such a hearing as the nature of the case fairly admits of is secured to aliens, and neither aliens nor citizens are entitled to anything more than a hearing that complies with this rule.

The cases showing this are too numerous to cite, but the general doctrine has been exemplified in customs cases, as in *Hilton* v. *Merritt* (110 U. S., 97); in Government collections, as in *Murray's Lessee* (18 How., 272); as to the breach of an ordinance or police regulation, as in *Natal* v. *Louisiana* (139 U. S., 621); in proceedings to strike the name of an attorney off the roll, as in *Ex parte Wall* (107 U. S., 265); in proceedings of assessment, as in *Palmer* v. *McMahon* (133 U. S., 660); and *Bell's Gap R. Co.* (134 U. S., 232); as to prescribing a certificate for medical practitioners, as in *Dent* v. *West Virginia* (129 U. S., 114); and also in contempt cases, and in a long list of cases relating to taxation.

Under the rules and analogies of these decisions the statutory proceedings for the exclusion of prohibited aliens, it is respectfully submitted, are not in violation of the clause of the Constitution invoked.

IV.

THE UNITED STATES HAS THE RIGHT TO EXCLUDE FOREIGNERS AND ALIENS FROM ITS TERRITORY.

Vattel says (B. 1. sec. 94):

> The sovereign may forbid the entrance of his territory either to foreigners in general or in particular

> cases, or to certain persons or for certain particular purposes, according as he may think it advantageous to the State. There is nothing in all this that does not flow from the rights of domain and sovereignty; everyone is obliged to pay respect to the prohibition; and whoever dares to violate it incurs the penalty decreed to render it effectual.

And says further (B. 2, sec. 100):

> Since the lord of the territory may, whenever he thinks proper, forbid its being entered, he has, no doubt, a power to annex what conditions he pleases to the permission to enter.

Phillimore, under the heading of "self-preservation," says: (Vol. 1, p. 260).

> It is a received maxim of international law that the government of a State may prohibit the entrance of strangers into the country, and may, therefore, regulate the conditions under which they shall be allowed to remain in it, or may require and compel their departure from it.

And adds in a note:

> "This power," as Mr. Canning observed, "had undoubtedly been exercised by the crown, sometimes with, sometimes without, the consent of Parliament." (5 Canning's Speeches, p. 255.)

The power in question is, therefore, not only treated as a power recognized by the law of nations, but as one to be enforced by the executive branch of the Government.

This court has recently asserted a similar power to exist in the Government of the United States.

In the Chinese exclusion case (130 U. S., 581) Mr. Justice Field, in the opinion, quotes Chief Justice Marshall (7 Cranch, 116, 136), as follows (604):

> The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptable of no limitation not imposed by itself. Any restriction upon it deriving validity from an external source would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction. All exceptions, therefore, to the full and complete power of a nation within its own territories must be traced up to the consent of the nation itself. They can flow from no other legitimate source.

The right of this Government to exclude foreigners, as it shall deem fit, is distinctly declared, as follows (pp. 606, 607):

> The power of the Government to exclude foreigners from the country whenever, in its judgment, the public interests require such exclusion, has been asserted in repeated instances and never denied by the executive or legislative departments. In a communication made in December, 1852, to Mr. A. Dudley Mann, at one time a special agent of the Department of State in Europe, Mr. Everett, then Secretary of State under President Fillmore, writes: "This Government could never give up the right of excluding foreigners whose presence it might deem a source of danger to the United States. Nor will this Government consider such exclusion of American citizens from Russia necessarily a matter of diplomatic complaint to that country." In a dispatch

to Mr. Fay, our minister to Switzerland, in March, 1856, Mr. Marcy, Secretary of State under President Pierce, writes: "Every society possesses the undoubted right to determine who shall compose its members, and it is exercised by all nations, both in peace and war. It may always be questionable whether a resort to this power is warranted by the circumstances or what department of the Government is empowered to exert it; but there can be no doubt that it is possessed by all nations, and that each may decide for itself when the occasion arises demanding its exercise." In a communication in September, 1869, to Mr. Washburne, our minister to France, Mr. Fish, Secretary of State under President Grant, uses this language: "The control of the people within its limits and the right to expel from its territory persons who are dangerous to the peace of the state are too clearly within the essential attributes of sovereignty to be seriously contested."

And further unequivocal declarations of the right of the Government to exclude unsatisfactory persons from our territory are presented in this opinion and approved by this court.

V.

THE INSPECTOR WAS DULY APPOINTED.

The inspector alleges his appointment (fol. 17) and presents his report (fol. 29). He is acting as inspector and no denial of his right so to act appears in the record.

The objection that he was not lawfully appointed because the superintendent of immigration had not then been appointed is without reason, because the duty of ex-

ecuting the law and that of the appointing inspectors is with the Secretary of the Treasury and not with the superintendent.

VI.

SECTION 13 OF THE ACT OF 1891 HAS NO APPLICATION TO THE CASE AT BAR.

Appellant's counsel in his fourth point (p. 18) contends that section 13 seeks to place the summary work of executing the exclusion clauses of the statute under the supervision or especial review of the courts.

As it is plain that this section merely refers to the enforcement of penalties and other legal remedies and rights under the law, the claim is without foundation.

2.

A RETRIAL BEFORE THE COURT, UNDER THE WRIT, UPON THE MERITS WAS NOT AUTHORIZED.

The opposing counsel claims—

> Third (p. 17), that the court may go into the whole case on its merits by writ of habeas corpus.

and cites *In re Jung Ah Lung* (124 U. S., 620).

The case cited arose, not under any of the general immigration acts, but under the Chinese exclusion acts, where the provisions are widely different from those of the act of 1889 and the supplemented acts. This is especially shown in the discussion of section 12 of the Chinese exclusion act (124 U. S., pp. 628 to 632), where it is shown that judicial action is contemplated.

That decision of the inspector is final unless appealed from, as the statute permits; the universal and often decided rule applied to customs appraisals not appealed from or protested against may be cited.

The commissioner below, in his opinion, very properly says (pp. 12, 13):

> The statute has provided competent trial and appellate tribunals, and endowed with the power and duty of investigating and determining that right, and it is well settled that "whenever a statute gives a discretionary power to any person to be exercised by him upon his own opinion of certain facts, it is a sound rule of construction that the statutes constitutes him the sole and exclusive judge of the existence of those facts;" and "it is a presumption of law that all public officers * * * perform their proper official duties until the contrary is proved; and where an act is to be done * * * upon evidence and proofs to be laid before a public officer upon which he is to decide the fact that he has done the act * * * is prima facie evidence that the proofs have been regularly made and were satisfactory. No other tribunal, unless by law thereunto expressly authorized," is at liberty to reëxamine or controvert the sufficiency of such proofs if laid before him when the law has made such officer the proper judge of their sufficiency and competency.
>
> *Mott* vs. *Martin* (12 Wheat., 19, 31.)
>
> *The Phila., etc., Co.* vs. *Stimpson* (14 Pet., 448, 458).
>
> *Foley* vs. *Harrison* (15 How., 433, 448).
>
> The principles of law thus enunciated have been followed and applied in numerous cases by the Supreme Court and by circuit and district courts for the southern district of New York in habeas corpus proceedings, some of them arising under the immigration laws.